

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.2, and 476.6(8), the Utilities Board (Board) gives notice that on October 13, 2011, the Board issued an order in Docket No. RMU-2011-0002, In re: Capital Infrastructure Investment Automatic Adjustment Mechanism for Rate-Regulated Natural Gas Utilities [199 IAC 19.18], “Order Adopting Rule.” The rule adopted by the Board establishes two alternative procedures for automatic adjustment mechanisms through which rate-regulated natural gas utilities will be able to recover certain costs between general rate proceeding filings. To recover eligible investments under one of the procedures, the utility will be required to file for Board approval a proposed automatic adjustment mechanism that meets the four criteria established by the rule. Under the other automatic adjustment mechanism, a utility will be able to file a proposed tariff, with the information required by the adopted rule, that establishes a rate for recovery of eligible capital infrastructure investments that are required by governmental mandates or state or federal natural gas pipeline safety regulations. The Board has authority pursuant to Iowa Code section 476.6(8) to approve automatic adjustment mechanisms for rate-regulated utilities, provided that a schedule showing the automatic adjustment is first filed with the Board.

The proposed rule was published in the Iowa Administrative Bulletin (IAB) at IAB Vol. XXXIII, No. 24 (6/1/11), p. 1636, as **ARC 9529B**. Initial written comments addressing the proposed rule were filed by MidAmerican Energy Company (MidAmerican), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Interstate Power and Light Company (IPL), and Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills Energy).

On July 8, 2011, the Board conducted an oral presentation for interested persons to offer comments concerning the proposed rule and to allow the Board the opportunity to ask questions about the written comments. MidAmerican, Consumer Advocate, IPL, Black Hills Energy, and the American Association of Retired Persons (AARP) appeared, made comments, and responded to Board questions.

At the conclusion of the oral presentation, the Board stated that a date for additional written comments would be set by Board order. On July 14, 2011, the Board issued an order setting a date for additional comments. Additional comments were filed by MidAmerican, IPL, and Consumer Advocate. On July 29, 2011, Ag Processing Inc. (AGP) filed a statement of position concerning the proposed rule.

A complete discussion of the comments and the Board’s analysis and support for the revisions to the proposed rule can be found in the “Order Adopting Rule,” which is accessible through the Board’s electronic filing system (EFS) at the EFS Web site at <http://efs.iowa.gov>.

Based upon its review of the comments, the Board made certain revisions to the proposed rule. The revisions adopted and those not adopted are described below.

The Board revised the proposed criteria in 19.18(1)“a” by adopting a fourth criterion. This fourth criterion is also included in the Board’s electric rules at 199 IAC 20.9(1). The Board did not adopt a suggested change that would have required a utility to meet the requirements of both 19.18(1)“a” and “b” before implementing an automatic adjustment mechanism. The Board stated that recovery under 19.18(1)“b” addressed a problem that the Board considered significant enough to deviate from the traditional criteria adopted in 19.18(1)“a.”

The Board did not adopt suggested changes to the criteria in 19.18(1)“b” that would have expanded recovery beyond capital infrastructure investment required by government mandate or state and federal natural gas pipeline safety regulations. The Board stated that the suggested changes would have included costs that should only be reviewed in a general rate proceeding so that all of a utility’s costs could be reviewed to balance any savings against any cost increases. The Board was also concerned that expansion beyond the proposed specific costs would turn the tariff filing under 19.18(1)“b” into a rate case proceeding and would defeat one of the primary benefits expected from adopting an automatic adjustment mechanism, reduced rate case expense for ratepayers.

After a review of the proposed rule and the comments, the Board made two revisions to 19.18(1)“b.” First, the Board removed the phrase “required for safety” proposed in 19.18(1)“b”(3), which the Board decided was probably redundant and could not be easily defined. Second, the Board removed the phrase “that become effective after January 1, 2011” also proposed in 19.18(1)“b”(3). This latter phrase, the Board determined, could eliminate recovery of costs that would otherwise be recoverable only because of the date of the federal regulation. Such a limitation did not seem necessary based upon the limitation on the types of investments that could be recovered.

To allow the Board to review the results of any automatic adjustment mechanism implemented pursuant to 19.18(1)“b,” the Board has revised the proposed rule by adding a sunset provision to this mechanism. The Board stated that since this is the first automatic adjustment mechanism of this type, it is appropriate to place a sunset provision in the rule to allow for Board review after four years. The sunset provision will allow the Board the opportunity to examine the results of the mechanism and to ensure there are no unforeseen consequences that follow implementation and the expected ratepayer benefits were realized.

The Board did not make a revision to 19.18(2) to eliminate a return on the eligible investment and did not make a revision to use the utility’s last overall rate of return as the return to be earned for recovery in the automatic adjustment mechanism under 19.18(1)“b.” The Board stated that allowing a return on the investment provides an incentive for a utility to make the investments expeditiously and removing this recovery could reduce this incentive. The Board stated that allowing recovery of the overall rate of return would not recognize that recovery pursuant to an automatic adjustment mechanism would reduce regulatory lag by allowing recovery between general rate proceedings and this should be recognized in a somewhat lower return on the investment.

The Board did not adopt a suggested revision that would have limited implementation of an automatic adjustment mechanism to a utility that had filed a general rate case proceeding within three years of implementation of the automatic adjustment mechanism or to a utility that was not subject to a rate freeze. The Board did not consider either of these limitations to be reasonable or consistent with the overall purpose of the rule.

The Board adopted a suggested revision to the proposed rule that added the language “including compliance with an integrity or safety plan adopted by the gas utility to comply with any such mandate or action” in 19.18(3)“b”(1). This language allows utilities to include capital infrastructure investment that is made based upon an integrity management plan required by federal natural gas pipeline safety rules but not actually approved by a federal agency. To make sure the Board has sufficient information to review these types of investments, the Board also added a provision as 19.18(3)“b”(6) that describes the information the utility will be required to file to support recovery of investment made under 19.18(3)“b”(1).

The Board adopted a revision to 19.18(3)“c” suggested in the comments that will give utilities flexibility in determining the volumes and degree-day adjustments to use in calculating the automatic adjustment factor to be included in rates. The Board stated that it did not consider a standard formula necessary since the costs and revenues would be reconciled annually and any discrepancy can be corrected at that time.

Finally, the Board clarified the manner in which the automatic adjustment mechanism process will work by adopting a new paragraph, 19.18(3)“e,” which explains that, once an automatic adjustment mechanism is implemented, the utility will file a new tariff each year for recovery, even if the utility has no new eligible capital infrastructure investment to add to the investment already being recovered. Recovery of the return on and return of the investment will continue until temporary rates are effective in a subsequent general rate case filing or, if temporary rates are not implemented, until final rates are effective in the utility’s next general rate case. At that time, the automatic adjustment mechanism will reset to zero. Recovery would also end when the unit is completely depreciated, if this occurs before a general rate proceeding is filed. In addition, an annual reconciliation is required to be filed as long as the recovery rate under an automatic adjustment mechanism is above zero.

After analysis and review of this rule making, no impact on jobs has been found.

This rule is intended to implement Iowa Code sections 17A.4, 476.2, and 476.6(8).

This rule will become effective December 7, 2011.

The following amendment is adopted.

Adopt the following new rule 199—19.18(476):

199—19.18(476) Capital infrastructure investment automatic adjustment mechanism.

19.18(1) *Eligible capital infrastructure investment.* A rate-regulated natural gas utility may file for board approval a capital infrastructure investment automatic adjustment mechanism to allow recovery of certain costs from customers. To be eligible for recovery through the capital infrastructure investment automatic adjustment mechanism, the costs shall either:

a. Meet the following criteria:

(1) The costs are beyond the direct control of management;

(2) The costs are subject to sudden, important change in level;

(3) The costs are an important factor in determining the total cost of capital infrastructure investment to serve customers; and

(4) The costs are readily, precisely, and continuously segregated in the accounts of the utility; or

b. Be costs for a capital infrastructure investment which:

(1) Does not serve to increase revenues by directly connecting the infrastructure replacement to new customers;

(2) Is in service but was not included in the gas utility's rate base in its most recent general rate case; and

(3) Replaces or modifies existing infrastructure required by state or local government action or is required to meet state or federal natural gas pipeline safety regulations.

c. Recovery of additional costs for eligible infrastructure investment through an automatic adjustment mechanism under paragraph 19.18(1)“*b*” shall not be allowed after four years from December 7, 2011. The costs of eligible capital infrastructure investment included in rates prior to the end of the four-year period may still be recovered until the utility's next general rate proceeding filing or until the unit of capital has been depreciated to zero. The utility shall file a proposed tariff annually for recovery after the end of the four-year period.

19.18(2) *Determination of recovery factor.* The utility may recover a rate of return and depreciation expense associated with eligible capital infrastructure investments described in subrule 19.18(1). The allowed rate of return shall be the average cost of debt from the utility's last general rate review proceeding. Depreciation expense shall be based upon the depreciation rates allowed by the board in the utility's last general rate review proceeding.

19.18(3) *Recovery procedures.*

a. To recover capital infrastructure investment costs that meet the criteria in paragraph 19.18(1)“*a*” through an automatic adjustment mechanism, the utility is required to obtain prior board approval of the automatic adjustment mechanism. The utility shall file information in support of the proposed automatic adjustment mechanism that includes:

(1) A description of the capital infrastructure investment and the costs that are proposed to be recovered through the automatic adjustment mechanism;

(2) An explanation of why the costs of the capital infrastructure investment are beyond the control of the utility's management;

(3) An exhibit that shows the changes in level of the costs of the capital infrastructure investment that are proposed to be recovered, both historical and projected;

(4) An explanation of why these particular capital infrastructure investment costs are an important factor in determining the total cost of capital infrastructure investment to serve customers;

(5) A description of proposed recovery procedures, if different from the procedures described in paragraphs 19.18(3)“*c*” and “*d*”; and

(6) The length of time that the automatic adjustment mechanism will be in place.

b. Recovery of capital infrastructure investment costs that meet the requirements in paragraph 19.18(1)“*b*” may be made by the utility by filing a proposed tariff with a 30-day effective date. Only

one tariff filing to recover capital infrastructure investment costs shall be made in a 12-month period. The utility shall file information in support of the proposed automatic adjustment rates that includes:

(1) The government entity mandate or action, including compliance with an integrity or safety plan adopted by the gas utility to comply with any such mandate or action, that results in the gas utility project and the purpose of the project, or the safety-related reason requiring the project.

(2) The location, description, and costs associated with the project.

(3) The cost of debt and applicable depreciation rates from the utility's last general rate review proceeding.

(4) The calculations showing the total costs that are eligible for recovery and the rates that are proposed to be implemented.

(5) The utility shall provide supporting documentation, including but not limited to work orders and journal entries, to the board staff or the office of consumer advocate upon request.

(6) If the capital infrastructure investment to be included in the automatic adjustment mechanism is based upon an integrity or safety plan adopted in compliance with state or federal natural gas pipeline safety regulations, describe the relationship of the capital infrastructure investment to the integrity or safety plan and the relationship of the integrity or safety plan to a specific state or federal regulation. Provide the date the state or federal regulation was adopted, any relevant compliance dates, and the date the integrity or safety plan was adopted by the utility and how the integrity or safety plan was developed.

c. The utility shall calculate the rates for the recovery of the capital infrastructure investment through the automatic adjustment mechanism over the 12-month period beginning from the effective date of the tariff, unless otherwise ordered by the board. Unless otherwise specified in an approved tariff, the capital infrastructure investment factor shall be calculated by taking the total eligible investment costs for the prior calendar year divided by the actual prior calendar year's sales volumes with the necessary degree-day adjustments. The utility may also use the degree-day adjustment that the utility utilized in the most recent purchased gas adjustment annual filing or any other appropriate degree-day adjustment. The degree-day adjustment shall not be determinative of any weather normalization adjustment in any future rate case.

d. The utility shall file an annual reconciliation within 60 days of the end of the 12-month period each year after the initial year in which the automatic adjustment mechanism is implemented that reconciles the actual revenue recovered through the automatic adjustment mechanism with the costs of the eligible capital infrastructure investments proposed to be recovered. The reconciliation shall be for the 12-month period beginning with the effective date of the tariff. Any over-recoveries or under-recoveries from the reconciliation shall be recovered over the ten-month period from the effective date of any adjustment required by the reconciliation.

e. Recovery of a return on and return of capital infrastructure investment that is eligible for recovery pursuant to an automatic adjustment mechanism approved under this rule shall continue until the effective date of temporary rates in a subsequent general rate proceeding or, if temporary rates are not implemented, until final rates approved by the board in the utility's next general rate proceeding. To continue recovery, a utility shall file a proposed tariff each year. Once final rates approved by the board in the next general rate proceeding are effective, the automatic adjustment mechanism shall reset to zero.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/2/11.